NO. 22220

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCIS ALFRED KING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

GEORGE G. RAYBORN,
Assistant U. S. Attorney,

1200 U. S. Court House,
312 North Spring Street,
Los Angeles, California 90012,

Attorneys for Appellee,
United States of America.

NO. 22220

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCIS ALFRED KING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

GEORGE G. RAYBORN,
Assistant U. S. Attorney,

1200 U. S. Court House,
312 North Spring Street,
Los Angeles, California 90012,

Attorneys for Appellee,
United States of America.

TOPICAL INDEX

TABLE OF AUTHORITIES

Statutes

NO. 22220

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCIS ALFRED KING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

I

JURISDICTION

On March 29, 1965, appellant entered pleas of guilty to two counts of a nine-count criminal indictment charging appellant and a codefendant, Joe Villarreal, with nine [1/] separate violations of Title 18, United States Code, Sections 2113(a) and (d). On April 26, 1965, the Honorable Charles H. Carr, United States District Judge for the Southern District of California, Central Division, sentenced appellant to imprisonment for a period of 30 years.

On April 4, 1967, appellant filed a motion to vacate his

1/ Mr. Villarreal was charged in eight of the counts.

sentence, pursuant to Title 28, United States Code, Section 2255. Appellant alleged that his pleas of guilty were involuntary in that they were coerced by the trial judge and by other Government agents [C. T. 2]. 2/ Appellant also alleged that he had been denied a fair trial in that the trial judge was prejudiced and his attorney was incompetent [C. T. 2]. He filed an affidavit of bias with his motion and requested that Judge Carr be disqualified from hearing his motion. Judge Carr reviewed appellant's motion and on May 19, 1967, he denied the motion [C. T. 23]. Notice of Appeal was filed by appellant on July 12, 1967 [C. T. 37].

The District Court had jurisdiction of the motion, pursuant to Title 28, United States Code, Section 2255. This Court has jurisdiction on this appeal pursuant to Title 28, United States Code, Section 1291.

II

STATUTES INVOLVED

Title 28, United States Code, Section 2255, provides as follows:

> "A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws

---

2/ "C. T." refers to Clerk's Transcript.

of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

"A motion for such relief may be made at any time.

"Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

" . . .

". . .

"An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus."

Title 28, United States Code, Section 144, provides as follows:

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

"The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists. . . . "

III

STATEMENT OF FACTS

On March 8, 1965, appellant, with retained counsel, Thomas R. Cronin, appeared before Judge Carr and entered a plea of not guilty to the charges against him [R. T. 8]. 3/ Trial was set for March 29, 1965 [R. T. 9]. On March 29th, however,

---

3/ "R. T." refers to Reporter's Transcript.

appellant withdrew his plea of not guilty and, again with retained counsel, entered pleas of guilty to two of the nine counts [R. T. 14]. After questioning appellant and his attorney, Judge Carr accepted appellant's plea [R. T. 18]. On April 26, 1965, Judge Carr, after hearing appellant's counsel and appellant, sentenced appellant to 30 years' imprisonment.

IV

SPECIFICATION OF ERRORS

Three questions emerge from the argument presented in appellant's opening brief:

1. Did the trial judge, who had previously accepted appellant's plea of guilty and had imposed sentence, err in failing to disqualify himself from presiding over appellant's motion?

2. Did the trial judge err in determining that appellant's Affidavit of Bias was legally insufficient to prevent him from reviewing appellant's motion?

3. Did the trial judge err in denying appellant's motion without a hearing?

V

ARGUMENT

A. THAT THE TRIAL JUDGE HAD PREVIOUSLY ACCEPTED APPELLANT'S PLEA AND HAD IMPOSED SENTENCE DID NOT OF ITSELF PRECLUDE HIM FROM REVIEWING APPELLANT'S MOTION.

Appellant appears to contend that, even apart from the issue of bias, Judge Carr should not have reviewed his motion because he (Judge Carr), had made the original determinations in appellant's case. This contention, however, ignores one of the basic reasons Section 2255 was enacted. As stated in Carvell v. United States, 173 F. 2d 348, 348-349 (4 Cir. 1949):

> "Complaint is made that the judge who tried the case passed upon the motion. Not only was there no impropriety in this, but it is highly desirable in such cases that the motions be passed on by the judge who is familiar with the facts and circumstances surrounding the trial, and is consequently not likely to be misled by false allegations as to what occurred. It was to avoid the unseemly practice of having attacks upon the regularity of trials made before another judge through resort to habeas corpus that Section 2255 of Title 28 was inserted in the Judicial Code."

Accord: United States v. Smith, 337 F. 2d 49 (4 Cir. 1964),

cert. denied 381 U. S. 916 (1965).

Appellant cites the case of Halliday v. United States, 380 F. 2d 270 (1 Cir. 1967), as supporting his position. Appellee respectfully submits that the holding of the Halliday case is not applicable to the instant case. In the Halliday case, the court made it clear that its holding that it is improper for a sentencing judge to conduct an evidentiary hearing on a Section 2255 motion which challenges the validity of a prior determination by him does not mean " . . . that the sentencing judge cannot review a §2255 petition to conclude, if appropriate, that no evidentiary hearing is required." 380 F. 2d at 274. (Emphasis added.) Moreover, the court pointed out that it reached its conclusion "not from any feeling of Constitutional compulsion . . . ." Ibid.

Not only is the holding of the Halliday case inapplicable to the instant case, the rule in this Circuit is contrary to appellant's contention. As this Court recently stated:

> " . . . [A] judge who conducts the trial of a criminal case . . . is not thereafter disqualified from conducting a hearing pursuant to a motion instituted under the provisions of 28 U. S. C. § 2255."

Battaglia v. United States, 390 F. 2d 256, 259 (9 Cir. 1968);

Accord: Dillon v. United States, 307 F. 2d 445, 453 (9 Cir. 1962), (Barnes, J., dissenting).

B. THE TRIAL JUDGE DID NOT ERR IN RULING THAT APPELLANT'S AFFIDAVIT OF BIAS WAS LEGALLY INSUFFICIENT TO SHOW BIAS OR PREJUDICE.

1. APPELLANT'S FILING OF THE AFFIDAVIT OF BIAS DID NOT PRECLUDE THE TRIAL JUDGE FROM RULING ON THE LEGAL SUFFICIENCY OF THE AFFIDAVIT.

It is settled in this Circuit that the mere filing of an affidavit of bias does not automatically require the trial judge to withdraw from the case. See Price v. Johnson, 125 F. 2d 806 (9 Cir. 1942), cert. denied 316 U. S. 677 (1942), and Taylor v. United States, 179 F. 2d 640 (9 Cir. 1950). Rather, the trial judge has a duty to review the affidavit and to determine whether it is legally sufficient to require his withdrawal. Price v. Johnson, supra, and Taylor v. United States, supra. Accord: United States v. Bell, 351 F. 2d 868 (6 Cir. 1965), cert. denied 383 U. S. 947 (1966), and Behr v. Mine Safety Appliance Company, 233 F. 2d 371 (3 Cir. 1956).

2. APPELLANT'S AFFIDAVIT OF BIAS WAS LEGALLY INSUFFICIENT TO SHOW THAT THE TRIAL JUDGE WAS BIASED OR PREJUDICED.

When appellant filed his motion he asked that it be assigned to a judge other than Judge Carr. As the basis for his request,

appellant listed, in his Affidavit of Bias, three statements of Judge Carr which purportedly show bias or prejudice. Bias or prejudice as a grounds for removal of a district judge in a case pending before him is governed by Section 144, Title 28, United States Code. This section provides that a district judge shall withdraw from a case when one of the parties files a "sufficient" affidavit alleging that the judge has a "personal bias or prejudice . . . against him . . . ." The affiant is required, however, to " . . . [s]tate the facts and reasons for the belief that bias or prejudice exists. . . ." Appellee respectfully submits that when appellant's affidavit is tested by the standards established by Section 144, it clearly is insufficient in that it does not show that the trial judge was personally biased or prejudiced against appellant.

In Point 1 in his affidavit, appellant merely alleges that statements of the trial judge " . . . as set forth in my writ show and prove his bias attitude." The statements to which appellant refers appear to be those found on page 13 of his motion [C. T. 2]. Even assuming the truthfulness of the alleged statements, both the statements were directed to persons other than appellant, were uttered in cases other than appellant's case and did not concern appellant at all. In fact, appellant cites only one instance in his motion where the trial judge made a statement to appellant. That statement, concerning the length of sentence the trial court would have imposed if appellant had not entered a plea of guilty [see C. T. 2 (page 7) and R. T. 34], does not show that the trial judge

was personally biased against the appellant. While the statement does illustrate the trial judge's determination to impose long sentences upon convicted armed bank robbers, it does not show personal bias or prejudice as to appellant. See Cole v. Loew's, Inc., 76 F. Supp. 872, 880 (D. C. S. D. Cal. 1948), rev'd. on other grounds 185 F. 2d 641 (9 Cir. 1950).

Points two and three in appellant's affidavit similarly fail to show personal bias as to the defendant. In point two, appellant's allegation is not directed at showing bias but rather at showing that his plea of guilty was involuntary. In point three, which does appear to be directed at showing bias, appellant merely alleges that the trial judge, in open court, stated that "there will be no 2255's in this court, against this court." [C. T. 2 (page 18)]. This statement does not appear in the Reporter's Transcript of the proceedings involving appellant and nowhere in his affidavit or motion does appellant indicate that the alleged statement was made in his case or was directed to him. On the contrary, in his opening brief appellant states that the statement was made in a case other than his own and that he had no idea what a "2255" was at the time. Appellant's brief, p. 13. Even assuming that the trial judge did make the statement, appellee submits that it does not show bias but rather shows the trial judge's concern that the defendants receive all their legal rights.

When appellant's affidavit is considered in its entirety, it becomes clear that the affidavit does not contain any facts from which a reasonable man could infer that the trial judge was

personally biased against appellant. See Grimes v. United States, ___ F. 2d ___ (9 Cir., June 6, 1968 #21, 659). The affidavit merely sets out appellant's general conclusion that the trial judge was biased without stating any facts to support that conclusion. In the absence of any facts in the affidavit to support appellant's conclusion, the affidavit was clearly legally insufficient to establish personal bias on the part of the trial judge. See Berger v. United States, 255 U.S. 22 (1921); Wilkes v. United States, 80 F. 2d 285 (9 Cir. 1935); Inland Freight Lines v. United States, 202 F. 2d 169 (10 Cir. 1953); Fieldcrest Dairies, Inc. v. City of Chicago, 27 F. Supp. 258 (D.C. N.D. Ill. 1939); and United States v. Pendergrast, 34 F. Supp. 269 (D.C. W. D., Mo. 1940). The trial judge did not err, therefore, when he ruled that appellant's affidavit was legally insufficient to establish personal bias.

C. THE TRIAL JUDGE DID NOT ERR IN DENYING APPELLANT'S MOTION WITHOUT A HEARING.

Having determined that appellant's Affidavit of Bias was legally insufficient to require his withdrawal from this case, the trial judge was then free to act upon appellant's motion. See Eisler v. United States, 170 F. 2d 273 (D.C. Cir. 1948), and Behr v. Mine Safety Appliances Company, supra. As noted previously, the trial judge denied, without a hearing, appellant's motion [C. T. 23]. Appellant now contends that the trial judge's

ruling was erroneous in that he can prove the allegations he made in his motion. Appellant's brief, p. 2.

It is settled that a trial judge is not required to hold a hearing every time a Section 2255 motion is filed in his court. See Machibroda v. United States, 368 U.S. 487, 495 (1961); United States v. Hill, 319 F.2d 653, 654 (6 Cir. 1963); Jones v. United States, 290 F.2d 216 (10 Cir. 1961); and Mirra v. United States, 255 F. Supp. 570 (D.C. S.D. N.Y. 1966), aff'd 379 F.2d 782, 787 (2 Cir. 1967). The trial judge may, in his discretion, deny the petition without a hearing if the " . . . files and records of the case conclusively show that [the] petitioner is entitled to no relief." Jones v. United States, supra, 290 F.2d at 217. Accord: Swepston v. United States, 289 F.2d 166, 169 (8 Cir. 1961). Appellee respectfully submits that the files and records in this case do conclusively show that appellant is not entitled to any relief. Therefore, the trial judge did not err in denying appellant's motion without a hearing.

1. THE REPORTER'S TRANSCRIPT CONCLUSIVELY SHOWS THAT APPELLANT'S PLEA OF GUILTY WAS NOT COERCED BY THE TRIAL JUDGE.

Appellant contends that his plea of guilty was not voluntarily made but rather was the result of coercion by the trial judge. As appellant states, the cases clearly hold that a plea of guilty which is induced by comments or statements of the trial

judge, amounting to coercion, cannot stand. See Euziera v. United States, 249 F. 2d 293 (10 Cir. 1957); United States v. Schmidt, 376 F. 2d 751 (4 Cir. 1967); and United States v. Tateo, 214 F. Supp. 560 (D. C. S. D. N. Y. 1963). However, in each of these cases, the coercive comments were made by the trial judge to the defendant, or to the counsel for the defendant who relayed the comment to the defendant, prior to the time the defendant entered his plea of guilty. In appellant's case, on the other hand, the Reporter's Transcript shows that the trial judge had absolutely no conversation with appellant until after appellant had entered his plea of guilty [R. T. 6-8 and 13-14]. Further, the only conversation the trial judge had with appellant's attorney, until after appellant had entered his plea of guilty, occurred on the day appellant was arraigned and was limited to a discussion of the number of witnesses that appellant's attorney intended to call in defending appellant's case [R. T. 8 and 9].

In the instant case, the Reporter's Transcript shows that the trial judge did not initiate or suggest a plea of guilty. Rather appellant entered his plea prior to any conversation between himself and the trial judge. Appellee respectfully submits that this record conclusively shows that the trial judge did not coerce appellant into entering his plea of guilty.

2. THE REPORTER'S TRANSCRIPT CONCLUSIVELY SHOWS THAT APPELLANT WAS REPRESENTED BY COMPETENT COUNSEL OF HIS OWN CHOICE.

Appellant contends that he was mislead into entering a plea of guilty by an incompetent counsel. Appellant's brief, p. 10. This Court has repeatedly held that the standard to be applied in evaluating the adequacy of trial counsel is that the counsel's performance must be so incompetent as to make the trial "a farce or a mockery of justice." Rivera v. United States, 318 F. 2d 606, 608 (9 Cir. 1963), and cases cited therein, and Lyons v. United States, 325 F. 2d 370, 377 (9 Cir. 1963). In appellant's case, however, appellant's counsel, Mr. Cronin, was not required to engage in an actual trial, he was merely required to assist appellant in determining whether to enter a plea of guilty. As the court in Scherk v. United States, pointed out:

> "In a trial accused, usually a layman, is almost totally dependent upon trial counsel to adequately present his version of the facts and whatever defenses he might have to the trier of fact. A plea of guilty however does not involve such extensive reliance on counsel. As stated in Edwards v. United States, 103 U. S. App. D. C. 152, 256 F. 2d 707 (1958):
>
> " '* * * here there are not baffling complexities which require a lawyer for

illumination; if voluntarily and understandingly made, even a layman should expect a plea of guilty to be treated as an honest confession of guilt and a waiver of all defenses known and unknown. And such is the law. A plea of guilty may not be withdrawn after sentence except to correct a "manifest injustice," and we find it difficult to imagine how "manifest injustice" could be shown except by proof that the plea was not voluntarily or understandingly made, or a showing that defendant was ignorant of his right to counsel. Certainly ineffective assistance of counsel, as opposed to ignorance of the right to counsel, is immaterial in an attempt to impeach a plea of guilty, except perhaps to the extent that it bears on the issues of voluntariness and understanding.' 256 F. 2d at 709, 710 (Emphasis added)."

242 F. Supp. 445, 447-8 (D.C. N.D. Cal., 1965), aff'd 354 F. 2d 239 (9 Cir. 1965), cert. denied 382 U.S. 882 (1965).

The Reporter's Transcript shows that Mr. Cronin knew appellant "several" years prior to the time he represented appellant in the court below [R. T. 21]. It also shows that Mr.

Cronin appeared with appellant, as retained counsel, at the time that he was arraigned and again when he entered his plea, three weeks after the arraignment [R. T. 3, 6 and 13]. Prior to accepting appellant's plea, the trial judge inquired of Mr. Cronin whether he had consulted with the defendants, appellant and Mr. Villarreal, and whether he had discussed the charges with the defendants [R. T. 17-18]. Mr. Cronin answered affirmatively [R. T. 17-18].

Appellant's contention that his counsel was incompetent includes the allegation that his counsel was intimidated by the trial judge. As appellee has previously pointed out, the Reporter's Transcript shows that Mr. Cronin only had one brief discussion with the trial judge prior to the time appellant entered his plea of guilty [R. T. 8-10]. The transcript of that discussion does not, in any way, indicate that Mr. Cronin was intimidated by the trial judge [R. T. 8-10].

Appellee respectfully submits that the Reporter's Transcript conclusively shows that appellant was adequately represented by competent counsel of his own choosing. The proceedings in the court below were far from being a "farce"; rather, the Reporter's Transcript shows that Mr. Cronin ably represented appellant.

3. THE REPORTER'S TRANSCRIPT CONCLUSIVELY SHOWS THAT APPELLANT'S PLEA OF GUILTY WAS KNOWINGLY AND VOLUNTARILY MADE.

The Reporter's Transcript shows that the trial judge questioned appellant in detail prior to accepting his plea [R. T. 13-16]. Under questioning by the trial judge, appellant stated, among other things, that no one had threatened him to make the plea; that he was making the plea of his own free will; that he knew what the maximum sentence that he might receive was; that he had discussed the matter with his counsel and that he was acting with the advice and consent of his counsel; and, that he was making the plea because he was guilty [R. T. 15-16]. Only after appellant and his counsel had assured the trial judge that they did not know of any reason why appellant's plea should not be accepted, did the trial judge accept appellant's plea [R. T. 16 and 18].

Appellant now, more than three years after he entered his plea, seeks to repudiate his plea. Appellant contends that he should be allowed to withdraw his plea of guilty in that it was involuntary because it was coerced by statements by the trial judge, [4/] the prosecuting attorney and by a United States Marshal. Appellant's brief, p. 9.

4/ See appellee's discussion of this point, supra, pp. 12-13.

Appellee respectfully submits that appellant's allegation that his plea was coerced by statements by the prosecuting attorney did not justify the granting of a hearing in this case. Appellant's allegation is vague and is void of any factual support. Appellant's brief, p. 9. Further, appellant's allegation is contradicted by his statement in open court that no one had threatened him in any way to make his plea. Appellant's brief, p. 15.

Appellee also submits that appellant's allegation that his plea was coerced by statements by a United States Marshal did not justify the granting of a hearing. The alleged statement of the Marshal [appellant's brief, p. 9], shows only that the Marshal told appellant that the trial judge was strict with bank robbers and that he (appellant) should plead guilty if he were guilty. On its face, this statement is not coercive.

The principle applicable in this case was succinctly stated by the Court of Appeals for the Eighth Circuit in Burgett v. United States, 237 F.2d 247, 251 (8 Cir. 1956), cert. denied 352 U.S. 1031 (1957):

> "A defendant, having been represented by competent counsel, having been given every opportunity and right afforded by the law and having entered a plea of guilty, may not, without some reasonable basis, come into court years later and repudiate his prior plea. It is not the intent of Section 2255 . . . to require a hearing upon the mere assertion that a prior plea was false. To

so interpret the statute . . . is to say that every time a defendant desires to change his mind as to the reason for entering a plea a hearing must be held with the defendant present."

Accord: Overman v. United States, 281 F. 2d 497 (6 Cir. 1960). Appellee respectfully submits that appellant's allegations do not constitute such a reasonable basis to allow him to repudiate his prior plea.

4. THE REPORTER'S TRANSCRIPT CONCLUSIVELY SHOWS THAT APPELLANT DID NOT RECEIVE AN EXCESSIVE OR ILLEGAL SENTENCE.

The Reporter's Transcript shows that appellant knew when he entered his plea of guilty that the trial judge could sentence him to fifty (50) years in prison [R. T. 15]. Instead of imposing the maximum sentence allowable by law, the trial judge sentenced appellant to thirty (30) years' imprisonment [R. T. 36]. Appellant's sentence is well within the limits fixed by Section 2113, Title 18, United States Code, and, therefore, appellant may not collaterally attack his sentence. See Jones v. United States, 323 F. 2d 864 (10 Cir. 1963).

Despite the obvious fact that appellant's sentence is well within the statutory limits, appellant devotes the major portion of his brief to his attempt to show that the trial judge imposes long sentences on bank robbers. Appellant's brief, pp. 3-4 and 13-17.

Even if appellant could show that the trial judge does impose maximum sentences on convicted bank robbers, [5/] it does not necessarily follow that appellant was denied a fair hearing or was deprived of any of his rights. See Cole v. Loew's Inc., supra, 76 F. Supp. at 880.

In essence, appellant's motion and brief complain that the trial judge refused to give appellant a light sentence after he had entered his plea of guilty [C. T. 2 (pp. 13-14), and appellant's brief, 14-17]. Apparently, appellant hoped to receive a sentence of fifteen years' imprisonment [appellant's brief, p. 11]; instead of the hoped-for sentence, the trial judge imposed a more severe sentence. Appellee respectfully submits that this is not a sufficient ground for vacating the sentence imposed. See United States v. Page, 229 F. 2d 91 (2 Cir. 1956), and Verdon v. United States, 296 F. 2d 549 (8 Cir. 1961), cert. denied 370 U. S. 945 (1961).

5/ In fact, appellant fails to make such a showing. Appellant himself received a sentence considerably below the maximum allowable by law.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment of the trial court should be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

GEORGE G. RAYBORN,
Assistant U. S. Attorney,

Attorneys for Appellee,
United States of America.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ George G. Rayborn
GEORGE G. RAYBORN